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DWO P-04

Paper No. 17-

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**JAN 16 2004**

**OFFICE OF PETITIONS**

In re Application of :  
Lindemann et al. :  
Application No. 09/707,616 : ON PETITION  
Filed: 6 April, 2001 :  
Attorney's Docket No. 1128-AL/D1 :

This is a decision on the petition under 37 CFR 1.137(b),<sup>1</sup> filed on 18 December, 2003, which is first treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The instant application became abandoned on 8 August, 2003, for failure to timely respond to the non-final Office action mailed on 7 May, 2003, which set a three (3) month shortened statutory

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<sup>1</sup>Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

period for reply was set. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 3 December, 2003.

**Petition Under 37 CFR 1.181**

Petitioners assert that the Office action mailed on 7 May, 2003, was never received. A review of the written record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity there is a strong presumption that the Notice was properly mailed to the applicant at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.<sup>2</sup> This showing may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail.

It is noted that the address of record, which is the address to which the Office action was mailed, is in Austin, TX, while the address listed on the petition is in Highlands Ranch, CO. Petitioners have not stated when counsel moved to the new address. Despite petitioners' statement that a search of the docket records and file jacket indicates that the Office action was not received and petitioners' inclusion of a docket record, the showing of record is that counsel relocated to Colorado but did not timely inform the Office thereof. As such, the Office action may have been properly mailed to the address of record but not received because petitioners were no longer receiving mail at that address.

As the showing of record does not warrant withdrawal of the holding of abandonment, the petition under 37 CFR 1.181 will be dismissed.

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<sup>2</sup>See Withdrawing the Holding of Abandonment When Office Actions Are Not Received; Notice 1156 Off. Gaz. Pat. Office 53 (November 16, 1993).

Petition Under 37 CFR 1.137(b)

Petitioners submitted an amendment and an IDS as the required reply.

The petition is granted. The holding of abandonment is withdrawn.

The application is being forwarded to Technology Center 2600 for further processing.

The address listed on the petition filed on 18 December, 2003, is different than the correspondence address of record. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Telephone inquiries concerning this matter may be directed to the undersigned at 703.308.6918.



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